

LICENSE AGREEMENT

WEST COAST ARBORISTS, INC.

Assessor Parcel Numbers 233-170-002 and 233-170-003

THIS LICENSE AGREEMENT ("License") is made and entered into this _____ day of _____, 2020, by and between the CITY OF RIVERSIDE, a California charter city and municipal corporation ("City"), and WEST COAST ARBORISTS, INC., a California corporation ("Licensee").

RECITALS

A. City owns approximately 1.5 acres of property located on the southeast corner of Gibson Street and Indiana Avenue, Riverside, California, and known as Assessor Parcel Numbers 233-170-002 and 233-170-003 (the "Property").

B. Licensee desires to license the parcels to store tree trimming equipment used to perform contract arborist maintenance work for the City of Riverside during its off hours.

C. City is agreeable to said use subject to the terms and conditions set forth below.

NOW, THEREFORE, the parties hereto mutually agree as follows:

1. **GRANT OF LICENSE:** City hereby grants to Licensee the use of the Property as generally depicted and described on the plat map attached hereto as Exhibit "A" and incorporated herein by this reference.

2. **TERM:** The term of this License shall be for a period of two years, and shall become effective upon execution of this License by both parties as of the date written above ("Effective Date"), and shall terminate two years from the Effective Date unless this License is earlier terminated pursuant to the termination provisions pursuant to section 21 hereof.

3. **USE OF PROPERTY:** The Property shall be used solely for the purpose of storing tree trimming equipment while performing contract arborist maintenance work for the City of Riverside during its off hours and for no other purpose. Licensee shall access the Property only from Gibson Street, as depicted in Exhibit A. Licensee shall be required to install a six foot chain link fence with green mesh around the perimeter of the Property, as depicted in Exhibit A. Such use shall not interfere with the primary function of the City's use of the Property. Licensee shall be subject to the following terms and conditions:

(a) Any construction or reconstruction within the Property shall be in accordance with plans approved by the City, however, notwithstanding any such approval, the Licensee assumes full responsibility for the design, construction or reconstruction, including complete liability for defects in such design and construction or reconstruction, all at Licensee's sole cost.

(b) The property shall be kept in a safe operating condition at all times, and the Licensee hereby assumes all liability arising from any injury or damage to any person or entity caused by the exercise of the rights herein granted.

(c) Licensee agrees that the City has the right to partially or totally remove all or a portion of the surface improvements installed by Licensee, including any concrete paving covering the Property, as deemed necessary by the City. Costs related to the removal of the surface improvements for such use and costs related to the replacement of the subject surface improvements shall be borne by and are the responsibility of the Licensee.

(d) The Licensee shall keep the Property clear and free of structures, invasive landscaping, and surface obstructions inconsistent with Licensee's intended use, unless otherwise approved by the City.

(e) No construction or reconstruction shall be commenced until this License has been executed by the parties, and plans have been prepared by Licensee and approved by the City. The City is to be notified prior to the start of any construction activities on the Property, including any grading work.

(f) City makes no representation, covenant, warranty or promise that the Property is fit for any particular use, including the use for which this License is granted, and Licensee is not relying on any such representation, covenant, warranty or promise and accepts the Property in its "as is" condition.

(g) Access to and use of the Property shall be limited to Licensee, its employees, agents and contractors. Licensee is strictly prohibited from allowing any access to or use of the Property by the general public.

(h) Licensee shall keep the Property locked at all times.

(i) Licensee shall maintain the Property in a neat, clean and safe condition at all times, including maintaining any landscaping, removing trash and refuse, and be responsive to any complaints received from adjacent parcels.

4. **CONSIDERATION:**

(a) License Fee. As consideration for its use of the Property, Licensee shall pay to City a monthly license fee in the amount of One Thousand Two Hundred Fifty Dollars (\$1,250.00) per month, due on the first day of each month.

(b) If this License is extended by mutual agreement of the parties for any additional term, Licensee shall pay to the City a monthly license fee in such amount as shall be determined by mutual agreement of the parties.

(c) The monthly license fee shall be paid by check made payable to the "City of Riverside" and delivered to City of Riverside, Central Cashiering, City Hall – 6th Floor, 3900 Main Street, Riverside, California 92522, on or before the first day of each month.

(d) If Licensee fails to pay the monthly license fee by the tenth (10th) day of the month in which it is due, Licensee agrees that the actual damage to the City would be impracticable or extremely difficult to determine. Therefore, Licensee agrees to pay a late fee equal to ten percent (10%) of the monthly license fee, which amount shall be added to the license fee due and considered part of the license fee due City hereunder. The amounts due under this subparagraph are in addition to and not in lieu of any other remedies of City.

5. **NON-DISCRIMINATION:** Except as provided in Section 12940 of the California Government Code, during Licensee's performance of this License, Licensee shall not discriminate on the grounds of race, religious creed, color, national origin, ancestry, age, physical handicap, medical condition, including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, genetic information, gender, gender identity, gender expression, sex or sexual orientation, veteran or military status, in use of the Property during the term of this License. Further, Licensee agrees to conform to the requirements of the Americans with Disabilities Act in the performance of this License.

6. **SUPERVISION:** Licensee shall be responsible for supervision and monitoring of all activities on the Property, including control of access to the Property at all times, and monitoring and abatement of any nuisance that is caused, or may be caused, by Licensee or Licensee's use.

7. **MAINTENANCE:** The Property shall be maintained by Licensee in a clean and orderly condition, including but not limited to free from rodents, insects, pests, trash and debris and all in compliance with all applicable provisions of the Riverside Municipal Code. A neat and clean appearance, and safe and sanitary conditions are required and are considered of utmost importance by City. Notwithstanding the foregoing, City's normal responsibility to maintain the common areas of the airport parking lot shall also apply to the Property, such as for surface maintenance. City agrees to coordinate any parking lot maintenance that will impact the availability of parking spaces, with Licensee so that some spaces remain available for Licensee.

8. **FLAMMABLES, WASTE AND NUISANCES:** Licensee agrees that it will not place or store, or allow any placement or storage of any hazardous waste, hazardous material, or flammable materials within the boundaries of the Property, and that it will not commit any waste upon or damage to the Property, nor suffer any to be done.

9. **HAZARDOUS SUBSTANCES INDEMNITY:** Licensee expressly agrees to and shall indemnify, defend, release and hold the City, its officers, officials, directors, agents, servants, and employees harmless from and against any liability, loss, fine, penalty, fee, charge, lien, judgment, damage, entry, claim, cause of action, suit, proceeding (whether legal or administrative), remediation, response, removal, or clean-up, and all costs and expenses associated therewith, and all other costs and expenses (including, but not limited to, attorney's fees, expert fees, and court costs) in any way related to the disposal, treatment, transportation, manufacture, or use of any Hazardous Substances on, in, under, or about the Property by Licensee, its officers, directors,

agents, servants, or employees. This indemnity, defense and hold harmless obligation shall survive the expiration or termination of this License.

10. **HAZARDOUS SUBSTANCES DEFINED:** Hazardous Substances shall mean any (a) substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to CERCLA, 42 U.S.C. § 9601, *et seq.*; The Hazardous Materials Transportation Act, 49 U.S.C. § 1801, *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.* ("RCRA"); The Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*; The Clean Water Act, 33 U.S.C. § 1251, *et seq.*; The Hazardous Waste Control Act, California Health and Safety Code ("H. & S.C.") § 25100, *et seq.*; the Hazardous Substance Account Act, H. & S.C. § 25330, *et seq.*; the California Safe Drinking Water and Toxic Enforcement Act, H. & S.C. § 25249.5, *et seq.*; Underground Storage of Hazardous Substances H. & S.C. § 25280, *et seq.*; the Carpenter-Presley-Tanner Hazardous Substance Account Act (H & S.C. § 25300 *et seq.*); The Hazardous Waste Management Act, H. & S.C. § 25170.1, *et seq.*; Hazardous Materials Response Plans and Inventory H. & S.C. § 25001 *et seq.*; or the Porter-Cologne Water Quality Control Act, Water Code § 13000, *et seq.*, all as amended, or any other federal, state or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect, (b) substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the above statutes, (c) petroleum, crude oil or any substance which contains gasoline, diesel fuel or other petroleum hydrocarbons other than petroleum and petroleum products contained within regularly operated motor vehicles, and (d) polychlorinated biphenyls (PCB), radon gas, urea-formaldehyde, asbestos and lead.

11. **UTILITIES:** There currently is no utility service available to Licensee at the Property. The City shall be under no obligation to provide any utility service of any kind to the Property during the term of this License. If Licensee determines utilities are required for Licensee's use of the Property, Licensee shall arrange and pay directly for all new utilities and services supplied to the Property, including but not limited to water, electricity, telephone, and natural gas, together with any taxes thereon.

12. **TAXES:** Without admitting any such liability, Licensee recognizes and understands that this License may create a possessory interest subject to property taxation pursuant to California Revenue and Taxation Code Section 107 and that Licensee may be subject to the payment of property taxes levied on such interest if such a determination is made by the Riverside County Tax Assessor or other government entity with the authority to make such determinations. All taxes and assessments which become due and payable with respect to the Property, and any improvements thereon, shall be the sole responsibility of Licensee, and any such payments shall not reduce any payment due City hereunder.

If Licensee shall, in good faith, desire to contest the validity, the imposition, or the amount of any tax or assessment or any other governmental charge herein agreed to be paid by Licensee, Licensee shall be permitted to do so; provided, however, the Licensee shall not permit or allow any lien to be placed or assessed upon the Property or any improvements thereon.

13. **CITY'S RIGHT TO INSPECT:** City shall have the right to inspect the Property at any time to ensure compliance with the terms of this License. Any repairs or specific actions found necessary as a result of inspections and which are the responsibility of Licensee shall be made promptly by Licensee, but in no event shall such repairs be initiated by Licensee later than two calendar days after receipt of written notification of the need for such repairs and/or specific actions, and such repairs and/or specific actions shall be completed within two days after receipt of such notification.

14. **FREE FROM LIENS OR CLAIMS:** Licensee shall keep the Property free from any mechanics' or materialmen's liens or other liens of any kind or nature for any work done, labor performed, or material furnished thereon at the insistence of or on account of Licensee, and Licensee further agrees to indemnify and save harmless City from and against any and all claims, liens, demands, costs and expenses of whatsoever nature for any such work done, labor performed, or materials furnished. The City at any time may post and keep posted on the Property appropriate notices to protect the City against the claims of any such persons, firms or corporations.

15. **INSURANCE:**

15.1 **General Provisions.** Prior to the City's execution of this License, Licensee shall provide satisfactory evidence of, and shall thereafter maintain during the term of this License, such insurance policies and coverages in the types, limits, forms and ratings required herein. The rating and required insurance policies and coverages may be modified in writing by the City's Risk Manager or City Attorney, or a designee, unless such modification is prohibited by law.

15.1.1 **Limitations.** These minimum amounts of coverage shall not constitute any limitation or cap on Licensee's indemnification obligations under Section 18 hereof.

15.1.2 **Ratings.** Any insurance policy or coverage provided by Licensee or subcontractors as required by this License shall be deemed inadequate and a material breach of this License, unless such policy or coverage is issued by insurance companies authorized to transact insurance business in the State of California with a policy holder's rating of A or higher and a Financial Class of VII or higher.

15.1.3 **Cancellation.** The policies shall not be canceled unless thirty (30) days' prior written notification of intended cancellation has been given to City by certified or registered mail, postage prepaid.

15.1.4 **Adequacy.** The City, its officers, employees and agents make no representation that the types or limits of insurance specified to be carried by Licensee pursuant to this License are adequate to protect Licensee. If Licensee believes that any required insurance coverage is inadequate, Licensee will obtain such additional insurance coverage as Licensee deems adequate, at Licensee's sole expense.

15.2 **Commercial General Liability and Automobile Insurance.** Prior to City's execution of this License, Licensee shall obtain, and shall thereafter maintain during the term of this License, commercial general liability insurance and automobile liability insurance for

vehicles as required to insure Licensee against damages for personal injury, including accidental death, as well as from claims for property damage, which may arise from or which may concern operations by anyone directly or indirectly employed by, connected with, or acting for or on behalf of Licensee. The City, and its officers, employees and agents, shall be named as additional insureds under the Licensee's insurance policies.

15.2.1 Licensee's commercial general liability insurance policy shall cover both bodily injury (including death) and property damage (including, but not limited to, premises operations liability, products-completed operations liability, independent contractor's liability, personal injury liability, and contractual liability) in an amount not less than \$1,000,000 per occurrence and a general aggregate limit in the amount of not less than \$2,000,000.

15.2.2 Licensee's automobile liability policy shall cover both bodily injury and property damage in an amount not less than \$1,000,000 per occurrence and an aggregate limit of not less than \$1,000,000. All of Licensee's automobile and/or commercial general liability insurance policies shall cover all vehicles used in connection with Licensee's performance of this License, which vehicles shall include, but are not limited to, Licensee owned vehicles, Licensee leased vehicles, Licensee's employee vehicles, non-Licensee owned vehicles and hired vehicles.

15.2.3 Prior to City's execution of this License, copies of insurance policies or original certificates along with additional insured endorsements acceptable to the City evidencing the coverage required by this License, for both commercial general and automobile liability insurance for vehicles, shall be filed with City and shall include the City and its officers, employees and agents, as additional insureds. Said policies shall be in the usual form of commercial general and automobile liability insurance policies, but shall include the following provisions:

It is agreed that the City of Riverside, and its officers, employees and agents, are added as additional insureds under this policy, solely for work done by and on behalf of the named insured for the City of Riverside.

15.2.4 The insurance policy or policies shall also comply with the following provisions:

- a. The policy shall be endorsed to waive any right of subrogation against the City and its sub-consultants, employees, officers and agents for services performed under this Agreement.
- b. If the policy is written on a claims made basis, the certificate should so specify and the policy must continue in force for one year after completion of the services. The retroactive date of coverage must also be listed.
- c. The policy shall specify that the insurance provided by Licensee will be considered primary and not contributory to

any other insurance available to the City and Endorsement No. CG 20010413 shall be provided to the City.

16. **NONINTERFERENCE WITH USE:** Licensee's use of the Property and the exercise of the rights herein granted shall not in any manner whatsoever interfere with the City's operations. City shall at all times have access to the Property. The rights herein granted are not exclusive rights and in no way limit the City's use of the Property for purposes not inconsistent with the uses granted herein.

17. **INDEMNIFICATION:** Except as to the sole negligence or willful misconduct of City, Licensee shall protect, defend, indemnify, and hold City and its officers, agents, employees and volunteers completely harmless from and against any and all liabilities, losses, suits, claims, judgments, fines or demands arising by reason of injury to or death of any person or damage to any property, including all reasonable costs for investigation and defense thereof (including but not limited to attorneys' fees, court costs, and expert fees), of any nature whatsoever arising out of or incident to this License and/or the use or occupancy of the Property or the acts or omissions of Licensee's officers, agents, employees, contractors, subcontractors, licensees, invitees or guests, regardless of where the injury, death, or damage may occur, unless such injury, death or damage is caused by the negligence or willful misconduct of City and/or its officers, employees or agents. This indemnification provision shall apply to any acts or omissions, willful misconduct or negligent conduct, whether active or passive, on the part of Licensee or any of Licensee's officers, agents, employees, contractors, subcontractors, licensees, invitees or guests. City shall give Licensee reasonable notice of any such claims or actions. Licensee shall use counsel reasonably acceptable to City in carrying out its obligations hereunder.

The parties expressly agree that any payment, attorney fee, cost or expense City may incur or makes to or on behalf of an injured employee under City's self-administered workers' compensation program is included as a loss, expense or cost for the purpose of this section, and that this section shall survive termination of this License.

18. **ASSIGNMENTS AND SUBLEASES:** This License is personal to Licensee, and Licensee shall not assign or transfer this License or any privilege thereunder, in whole or in part, and any attempt so to do shall be void and shall confer no right on any third party. Licensee shall not sublease or charge fees for any of the Property.

19. **NON-POSSESSORY INTEREST:** No permanent or possessory interest shall accrue to Licensee in the licensed Property by reason of this License or by exercise of the permission given and Licensee agrees to claim no such interest.

20. **GOVERNING LAW AND JURISDICTION:** Licensee agrees that in the exercise of its rights under this License, Licensee shall comply with all applicable federal, state, county and local laws, and regulations in connection with its use of the licensed Property. The existence, validity, construction, operation and effect of this License and all of its terms and provisions shall be determined in accordance with the laws of the State of California. Any action at law or in equity brought by either of the parties hereto for the purpose of enforcing a right or rights provided for by this License shall be tried in the Superior Court of California, County of

Riverside, and the parties hereby waive all provisions of law providing for a change of venue in such proceedings to any other county.

21. **TERMINATION:** In addition to the other methods of terminating this License, as provided herein, this License may be terminated by either party at any time upon sixty (60) days' notice in writing to the non-terminating party.

Upon termination of this License in any manner provided in this License, the Property shall remain in its improved condition, including but not limited to all improvements, landscaping (personal property not applicable) existing on the Property at the time of termination, unless the City submits a written request to Licensee that some or all of the improvements be removed, in which case Licensee is given thirty days to complete said removal of the improvements as identified by City. Should the City accept the Property with all improvements thereon, and then such improvements shall become the property of the City.

If the Property is abandoned by the Licensee for a period of two (2) months, all rights of the Licensee shall automatically terminate hereunder. Further, if the Licensee fails to conform to the terms and conditions of this License, all of the Licensee's rights hereunder shall terminate.

No termination hereunder shall release the Licensee from any liability or obligation, which may have attached or accrued prior to or which may accrue as of the time of termination of this License.

22. **DEFAULT:** Upon the failure of Licensee to perform any condition or term required herein, the City shall give written notice of such failure to perform as constituting a default of this License. If within ten calendar days Licensee does not correct the failure to the satisfaction of the City or does not provide a written explanation of Licensee's failure to perform, which explanation must be acceptable to City, this License shall then terminate immediately without further notice. Also, the City shall have the right to require that all operations immediately cease if City determines that the activities are being conducted in an unsafe or illegal manner.

23. **HOLDING OVER:** If Licensee fails to vacate the Property upon termination of this License, Licensee agrees to pay City a fee of One Hundred Dollars (\$100.00) per day for each day that Licensee occupies the Property beyond termination of this License.

24. **ENTIRE AGREEMENT:** This License embodies the entire agreement between the parties hereto in relation to the subject matter hereof, and no other agreement or understanding, verbal or otherwise, relative to this subject matter exists between the parties at the time of execution of this License. This License may only be modified or amended by the mutual consent of the parties in writing.

25. **NOTICES:** Service of any notices, bills, invoices or other documents required or permitted under this License shall be sufficient if sent by one party to the other by United States mail, postage prepaid and addressed as follows:

City

Community & Economic Development
Attn: Teresa Maryanski
City of Riverside
3900 Main Street
Riverside, CA 92522

Licensee

West Coast Arborists, Inc.
Attn: Martin Cortez
21718 Walnut Avenue
Grand Terrace, CA 92313

26. **SEVERABILITY:** Each provision, term, condition, covenant, and/or restriction, in whole and in part, in this License shall be considered severable. In the event any provision, term, condition, covenant, and/or restriction, in whole and/or in part, in this License is declared invalid, unconstitutional, or void for any reason, such provision or part thereof shall be severed from this License and shall not affect any other provision, term, condition, covenant, and/or restriction, of this License and the remainder of the License shall continue in full force and effect.

27. **PARAGRAPH TITLES:** The paragraph titles of this License are (i) inserted only for the convenience of the parties, (ii) are not intended to describe, define, limit, or otherwise affect the provisions in the portions of the License to which they pertain, and (iii) in no way describe, define, limit, or otherwise affect the scope or intent of this License or in any way affect the agreement of the parties set out in this License.

28. **RESERVATIONS:** This License is subject to all reservations, restrictions, rights and rights-of-way of record.

29. **AUTHORITY:** The individuals executing this License and the instruments referenced herein each represent and warrant that they have the legal power, right and actual authority to bind their respective parties to the terms and conditions hereof and thereof.

[SIGNATURES ON FOLLOWING PAGE.]

IN WITNESS WHEREOF, the parties hereto have caused this License to be duly executed on the date and year first written above.

CITY OF RIVERSIDE, a
California charter city and
municipal corporation

By: _____
City Manager

ATTEST:

By: _____
Colleen J. Nicol
City Clerk

Approved as to Form:

Assistant City Attorney
Susan D. Wilson

WEST COAST ARBORISTS, INC.,
a California corporation

By: _____
Name: Patrick Mahoney
Its: President

By: _____
Name: Richard Mahoney
Its: Secretary

EXHIBIT "A"

PLAT MAP

Assessor Parcel Numbers 233-170-002 and 233-170-003

